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8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
10

11 MICHAEL HOLTSINGER,

No. CIV S-03-0732-MCE-CMK-P

12 Plaintiff,

13 vs.

ORDER

14 TANYA VOROS<sup>1</sup>,

15 Defendants.  
16 \_\_\_\_\_/

17 Plaintiff, a state prisoner proceeding with appointed counsel, brings this civil  
18 rights action pursuant to 42 U.S.C. § 1983. Pending before the court are several motions to  
19 compel and ex parte applications for orders shortening time. The current scheduling order in this  
20 case has set a discovery cut-off date of June 15, 2009, a dispositive motion deadline of July 15,  
21 2009, and a trial date of November 9, 2009. The parties have several outstanding discovery  
22 issues they are attempting to resolve prior to the discovery cut-off date.

23 Plaintiff filed a motion to compel Defendant's production of documents (Doc.  
24 258), which is currently set for hearing on June 11, 2009. Subsequently, Defendant filed an ex  
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26 <sup>1</sup> The court notes that the only remaining defendant in this action is Voros, and has updated its caption accordingly.

1 parte application for order shortening time in regards to a motion to compel Plaintiff's expert  
 2 witness disclosure (Doc. 262) and Plaintiff filed an ex parte application for order shortening time  
 3 in regards to a motion to compel Defendant's attendance at a deposition (Doc. 267). Both parties  
 4 are requesting their motion to compel be heard on June 11, 2009, in conjunction to the timely  
 5 noticed motion to compel currently calendared. However, there is no stipulation as to having all  
 6 matters heard on that date. It appears that cooperation between counsel has broken down in this  
 7 case.<sup>2</sup>

8 In addition to the above, there appear to be several depositions set prior to the  
 9 hearing on June 11, 2009. The video-conference deposition of Plaintiff is set for June 9, 2009,  
 10 the deposition of the custodian of records for the California Department of Corrections (CDCR)  
 11 is set for June 10, 2009, and Defendant's deposition<sup>3</sup> was noticed for June 5, 2009.

12 The undersigned finds it appropriate to hear all of the outstanding discovery issues  
 13 at the same time. As each side is requesting an order shortening time for their respective motion  
 14 to be heard on June 11, 2009, and there does not appear to be any significant objection to having  
 15 the other motions heard at the same time, each of those requests will be granted. Therefore, the  
 16 court will hear the dispute regarding Plaintiff's motion to compel responses to his request for  
 17 production of documents, Defendant's motion to compel Plaintiff's expert witness disclosure,  
 18 and Plaintiff's motion to compel Defendant's attendance at a deposition on June 11, 2009, at  
 19 10:00 a.m. In addition, the court will hear arguments and will address the issue of Plaintiff's  
 20 deposition via videoconference and the deposition of the CDCR custodian of records at the same  
 21 time.

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 24 <sup>2</sup> It also appears that Defendant may have stopped cooperating with her attorney.  
 25 The court hopes counsel is able to persuade her client to cooperate in concluding this case  
 26 without the necessity of issuing sanctions for her lack of cooperation.

<sup>3</sup> However, it appears this deposition will not occur due to the unavailability of  
 Defendant. This deposition is the subject of one of the pending motions to compel.

1           However, as it appears some of these depositions are currently set prior to the  
2 hearing, the court will order that none of these depositions are to occur until after the hearing,  
3 absent a stipulation by the parties as to the resolution of the issues surrounding any particular  
4 deposition. If the parties are able to stipulate to a deposition going forward without the need for  
5 judicial intervention, the parties shall submit such a notice of stipulation to the court prior to the  
6 deposition being conducted. This is specifically in reference to Plaintiff's deposition,  
7 Defendant's deposition and the deposition of the CDCR custodian of records.

8           Therefore, on June 11, 2009, at 10:00 a.m., the court will hear the following  
9 discovery disputes:

- 10           1. Plaintiff's motion to compel Defendant's production of documents (Doc. 258);
- 11           2. Defendant's motion to compel Plaintiff's expert witness disclosure (Doc. 262);
- 12           3. Plaintiff's motion to compel Defendant's attendance at her deposition (Doc.  
13 267);
- 14           4. Defendant's deposition of Plaintiff, and the status of the parties' stipulation  
15 (Docs. 259, 266); and
- 16           5. Plaintiff's notice of deposition to the CDCR custodian of records, and  
17 objections thereto (Doc. 261).

18           Further, it appears to the undersigned that the parties should be able to resolve  
19 several of these issues with a good faith effort to meet and confer. The Eastern District Local  
20 Rules requires the parties to engage in a good faith effort to resolve their differences. See Local  
21 Rule 37-251(b). The court expects the parties here to engage in an good faith effort meet and  
22 confer session prior to completing their joint statement regarding the discovery disagreement for  
23 the hearing. Such a meet and confer session shall be conducted either personally or  
24 telephonically. An e-mail meet and confer will not be considered by the court to be a good faith  
25 effort.

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1 Finally, it appears that the discovery cutoff date may need to be extended in  
2 regards to the outstanding discovery issues outlined above. The parties are expected to address  
3 this issue, as well as any other scheduling issue that may arise due to the current discovery  
4 disputes, in their joint statement. The court, however, is reluctant to modify the currently  
5 scheduled trial date and expects the parties to be able to resolve their discovery issues with the  
6 November 9, 2009, trial date in mind.

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. The ex parte applications for orders shortening time (Docs. 262, 267) are  
9 granted;
- 10 2. All discovery disputes outlined above will be heard on June 11, 2009, at  
11 10:00 a.m. before the undersigned in Redding, California;
- 12 3. Telephonic appearances initiated from land line phones are allowed, but  
13 no cellular telephonic appearances will be permitted;
- 14 4. The parties shall engage in a good faith meet and confer conference, either  
15 personally or telephonically, prior to completing their joint statement;
- 16 5. The parties' joint statement regarding the discovery disagreement shall be  
17 filed on or before June 8, 2009; and
- 18 6. Absent a notice of stipulation on file with the court, none of the disputed  
19 depositions shall occur prior to the hearing on this matter, as outlined above.

20  
21 DATED: June 3, 2009

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23 **CRAIG M. KELLISON**  
24 UNITED STATES MAGISTRATE JUDGE  
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